

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20036

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JUN -5 1995

In the Matter of)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

)
)
) Amendment of Parts 2 and 90 of the
) Commission's Rules to Provide for the Use of
) 200 Channels Outside the Designated Filing
) Areas in the 896-901 MHz and the
) 935-940 MHz Bands Allotted to the
) Specialized Mobile Radio Pool
)

PR Docket No. 89-553

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)
) Implementation of Section 309(j) of the
) Communications Act - Competitive Bidding
)

PP Docket No. 93-253

)
) Implementation of Sections 3(n) and 322 of
) the Communications Act
)

GN Docket No. 93-252/

To: The Commission

PETITION FOR RECONSIDERATION

CelSMER, by its attorneys, hereby petitions the Commission for reconsideration of the report and order portion of the Second Report and Order and Second Further Notice of Proposed Rule Making, FCC 95-159 (PR Docket 89-553), released April 17, 1995 ("Second Report and Order and Further Notice"). More specifically, CelSMER requests that the Commission reconsider its affirmation of its earlier decision to maintain loading requirements for 900 MHz incumbent licensees. *Id.* at ¶157.

CelSMER is a general partnership in the business of managing and operating specialized mobile radio ("SMR") stations in the State of Florida and has developed a wide-area 900 MHz SMR system serving central Florida in major trading area ("MTA") M13 (Tampa-St.Petersburg-Orlando). Through the employment of new channel integra-

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tion technology, CelSMeR has been able to develop a virtually seamless network providing contiguous service across central Florida from the Gulf Coast to the Atlantic Coast. CelSMeR is now focusing its attention on the integration of new digital technology into its wide-area system. CelSMeR is one of the few 900 MHz incumbents that has actually constructed and is operating a wide-area system. CelSMeR is attempting to develop its wide-area system on an MTA basis. Thus, CelSMeR has standing to petition for partial reconsideration of the Commission's decision the Second Report and Order and Further Notice.

The Commission's decision to maintain loading requirements for 900 MHz incumbents is arbitrary and capricious. The Commission has failed to adequately distinguish 900 MHz SMR systems from 800 MHz SMR systems and, therefore, has failed to justify the disparate treatment of the two frequency segments of this single radio service. Indeed, the purported immaturity of the 900 MHz service vis-a-vis the 800 MHz service is not sufficient grounds to support the proposition that warehousing of spectrum is more prevalent in 900 MHz service than in the 800 MHz service.

Additionally, the fact that 900 MHz incumbents, unlike the 800 MHz incumbents, have been unable to provide wider coverage with their systems and thus have had more difficulty loading their systems is a function of restrictions imposed on the 900 MHz service by the Commission which limit 900 MHz incumbents to operating within DFAs. Therefore, the 900 MHz incumbents' confinement to limited service areas is not an accurate indicator of the maturity of the 900 MHz service. By continuing to apply loading requirements to the 900 MHz incumbents, the Commission is penalizing them

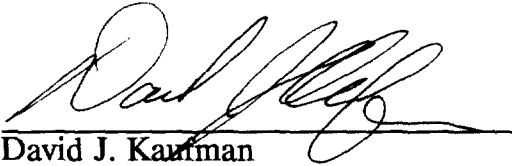
for a situation not of their own making, but which is due to Commission restrictions. Furthermore, those 900 MHz incumbents who have been able to enter into some kind of arrangement for the development of a wide-area system, such as CelSMeR and the 900 MHz incumbents who are participating in CelSMeR's wide-area system, have encountered other obstacles which have resulted in a reduction of loading on the systems. Examples of such obstacles include the implementation of new technology to allow for virtually seamless coverage of the wide service area or implementation of digital technology. The implementation of these new technologies necessarily inhibits the loading of additional mobile units until after the technology is in place and functioning properly. (Limiting the number of mobile units that must be altered or replaced to accommodate the new technology is an economically sound policy.)

The Commission's argument that 900 MHz incumbents can "overcome this obstacle by obtaining an MTA license", see Second Report and Order and Further Notice at ¶57, is specious. Not all 900 MHz incumbents, especially incumbents operating small single ten-channel block systems, will have the financial wherewithal to obtain an MTA license at auction. This does not mean, however, that these 900 MHz incumbents are not providing valuable service to the public. The Congress has prohibited the Commission from making auction revenues the sole factor in public policy. The Commission has violated the Congressional mandate in this case.

WHEREFORE, CelSMer respectfully submits that the Commission has failed to consider all relevant factors and has thus acted arbitrarily and capriciously when making its determination to retain loading requirements for 900 MHz incumbents, and requests that the Commission reconsider this decision.

Respectfully submitted,

CELSMER

By: 
David J. Kaufman

June 5, 1995

By: 
Lorretta K. Tobin

Its Attorneys

Brown Nietert & Kaufman, Chartered
1920 N Street, N.W., Suite 660
Washington, D.C. 20036
(202) 887-0600

lkt\840-peti.rcn